

Favorable reconsideration of the above-identified patent application, in light of the above amendments and the following remarks is respectfully requested. The presently pending claims are claims 1-20. Claims 1, 2, 4, 5, 14, 15, 18, 19, and 20 have been amended.

In paragraph 1 of the Office Action, the Examiner objected to the drawing under 37 CFR 1.84(p)(5). The Examiner stated that the strap adjusters (28) and the near shoulder strap 20 are not shown in FIG. 2. In response, the Applicant has amended the specification, paragraph 14 to reference FIG. 3, which shows the strap adjusters 28 and the near shoulder strap 20.

In paragraphs 2 and 3, the Examiner rejected claims 1-4, 6, 7, 10 and 13-20 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,436,233 to Hill et al. (Hill). The Examiner stated that Hill teaches a baby carrier that includes a harness which forms two apertures for the infant's legs and a back support. The Examiner also stated that the harness is supported on an individual's hip and is secured by two straps. Furthermore, the Examiner stated that a second strap is disclosed that encircles the waist of an individual, however, that it would be perfectly capable of being supported on the shoulder nearest the harness. The Examiner also stated that Hill does not disclose that the carrier is limited to being used on one side of the individual, therefore, depending on which hip the harness is supported on, the length-adjusting means could be located on the front of the individual and thus, being located on the chest and accessible while wearing.

In response, the Applicant has amended independent claims 1, 14, and 20 to better differentiate Applicant's invention from the cited references. Claims 2-4, 6, 7, 10, and 13 depend from amended independent claim 1 and recite additional limitations in combination with the novel

elements of claim 1. Additionally, claims 15-19 depend from amended independent claim 14 and recite additional limitations in combination with the novel elements of claim 14.

Hill teaches a baby carrier having a harness that includes two straps, one that crosses the chest and back region of the user and the other strap encircling the waist. On the other hand, the Applicant's invention provides a baby carrier which includes a harness which is arranged in such a manner to allow the infant to be supported on the hip of the individual and to allow proper positioning of the infant in the harness. Specifically, the Applicant's invention includes a near shoulder strap 20 which is attached to and *extends from a top perimeter portion* of the harness. The placement of the strap upon the harness is critical to provide proper support for the infant. Additionally, the Applicant's invention includes a means for adjusting the length of the near shoulder strap so that the vertical position of the infant may be adjusted in relation to the individual to provide proper positioning of the infant on the individual's hip. To properly position the infant in the harness against the individual, the infant must be positioned so that the crotch of the infant lies just above the hip of the individual. In addition, to adjust the height of the harness in relation to the infant, the present invention provides an adjustment means that is located on the top perimeter portion of the harness. The top portion of the harness should come up to the infant's armpits as depicted in FIG. 2 in the Applicant's application. If the top portion of the harness is located well below the armpits of the infant, the carrier will not adequately support the infant. Likewise, if the harness is located too far below the infant's armpits, the infant may fall out of the carrier. Additionally, if the top portion of the harness is above the armpits of the infant, the infant may have difficulty in seeing or moving his head. Thus, the Applicant's invention, by attaching the near shoulder strap to the top perimeter

portion of the harness in conjunction with an adjustment means to vary the length of the near shoulder strap enables the proper positioning of the infant within the carrier and to allow support of the infant on the hip of the individual. Hill does not disclose the waist strap being located on the top perimeter portion of the harness. In reviewing Hill, Hill does not teach or suggest utilizing the waist strap in any other fashion other than placement of the strap around the waist. In fact, Hill teaches against placing the strap in any other location when stating that "The weight of the infant is supported by the waist strap means, the shoulder strap means and the body of the adult" (Col. 2, lines 11-13).

If the waist shoulder strap was positioned on the near shoulder of the individual, the harness could not be adjusted to properly position the infant since the waist strap is located on a side portion of the harness. Photograph Attachment A is provided to show the Hill infant carrier on the left and the Applicant's invention on the right. Referring to the Hill carrier, the waist strap is located towards the top of the Hill carrier (top of harness when the harness is laid out), however, it should be noted that the waist strap extends from the *side perimeter* of the harness. This corresponds to the waist strap 34 in FIG. 1 of the Hill patent. In order to properly use a waist strap in Hill, the waist strap has to extend from the side perimeter of the harness. Referring to the Applicant's invention, the near shoulder strap is located at the top region of the harness. The near shoulder strap extends from the top perimeter portion of the harness.

Photograph attachment B shows positioning the waist strap of the Hill carrier on the shoulder of the individual as suggested by the Examiner in the Office Action. If the waist strap is positioned on the near shoulder of the user, the strap cannot lie flush against the individual's body.

Additionally, the adjustment to adjust the length of the strap will now allow the infant to move vertically up or down in relationship with the body of the individual to provide a proper positioning of the infant on the hip of the individual. With the waist strap positioned on the shoulder, the strap is twisted and cannot properly bear the weight of the infant. Photograph attachment C shows Applicant's invention with the near shoulder strap on the individual's shoulder. As can be seen in photograph C, the near shoulder strap lies flush against the individual's body. Additionally, when the length of the near shoulder strap is adjusted, the vertical position of the infant in relationship to the individual is allowed to allow proper positioning of the infant on the individual's hip, as well as to allow proper positioning of the infant in the harness.

For prior art to anticipate under Section 102, every element of the claimed invention must be identically disclosed, either expressly or under principles of inherency, in a single reference. *Corning Glass Works v. Sumitomo Electric*, 9 U.S. P.Q. 2d 1962, 1965 (Fed. Circ. 1989). The exclusion of a claimed element, no matter how insubstantial or obvious, from a prior art reference is enough to negate anticipation. *Connell v. Sears, Roebuck & Co.*, 220 U.S.P.Q. 193, 198 (Fed. Circ. 1983). Hill does not disclose positioning the near shoulder strap on the top perimeter portion of the harness or placing the waist strap on the near shoulder. In regards to inherency, inherency may be relied upon where, but only where, the consequence of following the reference disclosure always inherently produces or results in the claimed invention. *W.L. Gore Associates, Inc. v. Garlock, Inc.*, 220 U.S.P.Q. 303, 313 (Fed. Circ. 1983). If there is not a reasonable certainty that the claimed subject matter will necessarily result, the rejection fails. Hill merely discloses the use of the waist strap which specifically wraps around the user waist and does not provide an adjustment means

located on the top perimeter portion of the harness to adjust the infant on the individual's hip and to adjust the position of the infant in the harness. By changing the position of the waist strap to a shoulder, the Hill carrier will not properly allow the adjustment of the strap to properly position the infant on the individual's hip and to adjust the position of the infant in the harness. *In re Brink*, 164 U.S.P.Q. 247 (CCPA 1970). Also, accidental results, not intended and not appreciated, do not constitute an anticipation. *Georgia-Pacific Corp. v. United States Plywood Corp.*, 118 U.S.P.Q. 122, 128 (2nd Circ. 1958).

Additionally, it would not be obvious to one skilled in the art to modify Hill by changing where the straps extend. Hill specifically states that the waist strap is necessary to bear the weight of the infant. Hill does not provide any motivation to change the position of the waist strap to the shoulder strap. If the waist strap extends from the top perimeter of the harness rather than the side perimeter, the waist strap would not be useable as a waist strap. Therefore, the withdrawal of the rejection and the allowance of claims 1-4, 6, 7, 10 and 13-20 is respectfully requested.

In paragraphs 4 and 5, the Examiner rejected claim 5 under 35 U.S.C. 103(a) as being unpatentable over Hill as applied to claims 1-4, 6, 7, 10 and 13-20 and further in view of U.S. Patent No. 4,487,346 to Fischer (Fischer). The Examiner stated that Fischer teaches an infant sling-type carrier that includes a harness supported on the hip of an individual and secured by two shoulder straps. The Examiner further stated it would have been obvious to one skill in the art at the time of the invention to add padding to the shoulder straps as in the technology of Fischer to the Hill device.

In response, the Applicant has amended independent 1 claim to better differentiate Applicant's invention from the cited references. Claim 5 depends from amended independent claim 1 and recites additional limitations in combination with the novel elements of claim 1.

Hill does not teach or suggest attaching and extending the waist strap on the top perimeter portion of the harness or providing an adjusting means to allow proper positioning of the infant on the hip of the individual or to allow proper positioning of the infant in the harness. Hill merely discloses utilizing a waist strap attached to the side perimeter portion of the harness. Additionally, Hill clearly discusses using the waist strap to support the infant *along the waist* of the individual and explains the necessity of wrapping the strap around the waist. Therefore, the withdrawal of the rejection and the allowance of claim 5 is respectfully requested.

In paragraph 6, the Examiner rejected claim 8 under 35 U.S.C. 103(a) as being unpatentable over Hill as applied to claims 1-4, 6, 7, 10 and 13-20 and further in view of U.S. Patent No. 4,428,514 to Elf (Elf). The Examiner stated that Elf teaches an infant carrier that, as shown in FIG. 9, is capable of being oriented on the hip of an individual. Additionally, the Examiner stated that Elf discloses a strap-adjusting means that may be placed where they can be conveniently utilized. The Examiner also stated that it would have been obvious to one skilled in the art at the time of the invention to attach the adjusting means to the carrier of Hill as in the technology of Elf.

In response, the Applicant has amended independent claim 1 to better differentiate Applicant's invention from the cited references. Claim 8 depends from amended independent claim 1 and recites additional limitations in combination with the novel elements of claim 1.

As discussed above, Hill does not teach or suggest attaching the waist strap to and extending the strap from the *top perimeter portion* of the harness or providing an adjusting means to allow proper positioning of the infant on the hip of the individual or to allow proper positioning of the infant in the harness. Hill merely discloses utilizing a waist strap attached to the lower portion of the harness. Additionally, Hill clearly discusses using the waist strap to support the infant *along the waist* of the individual. The strap is positioned on the harness for the sole purpose of wrapping the waist strap around the individual's waist. Therefore, the withdrawal of the rejection and the allowance of claim 8 is respectfully requested.

In paragraph 7, the Examiner rejected claim 9 under 35 U.S.C. 103(a) as being unpatentable over Hill as applied to claims 1-4, 6, 7, 10 and 13-20 and further in view of U.S. Patent No. 6,182,873 to Christopher (Christopher). The Examiner stated that Christopher teaches an infant carrier with a harness that is supported on the hip of an individual and has a shoulder strap. The Examiner also stated that it would have been obvious to one skilled in the art at the time of the invention to utilize a shoulder cupping means as in the technology of Christopher in the device of Hill in order to provide means for the shoulder strap to cup the shoulder and be retained in one place.

In response, the Applicant has amended independent claim 1 to better differentiate Applicant's invention from the cited references. Claim 9 depends from amended independent claim 1 and recites additional limitations in combination with the novel elements of claim 1.

Hill does not teach or suggest utilizing the waist strap as a near shoulder strap for supporting the weight of the infant. More particularly, Hill explicitly teaches the use of the waist strap to support the infant and does not teach or suggest utilizing the strap to be attached to and extending

from the top perimeter portion of the harness. Additionally, Hill does not teach or suggest using the strap the placement of the infant on the hip or to adjust the height of the harness in relation to the infant. Therefore, the withdrawal of the rejection and the allowance of claim 9 is respectfully requested.

In paragraphs 8 and 9, the Examiner rejected claims 11 and 12 under 35 U.S.C. 103(a) as being unpatentable over Hill as applied to claims 1-4, 6, 7, 10 and 13-20 and further in view of U.S. Patent No. 4,637,635 to Aleman (Aleman). The Examiner stated that Aleman teaches a carrying strap for cameras and the like that includes two shoulder straps that have a structure similar to the Hill straps and are capable of carrying an object such as a harness. Aleman discloses a shoulder strap with a piece of material that is connectable for creating a loop capable of retaining objects. The Examiner further stated that the piece of material affixed to the shoulder strap disclosed by Aleman would be perfectly capable of wrapping around a member of a shopping cart in order to retain the strap assembly in place. The Examiner stated that both Aleman and Hill disclose common strap assemblies for retaining objects, it would have been obvious to one skilled in the art at the time of invention to utilized a connectable piece of material attached to a strap as in the technology of Aleman in order to provide the Hill device with means for connecting the straps to each other and to other objects such as shopping carts.

In response, the Applicant has amended independent claim 1 to better differentiate Applicant's invention from the cited references. Claims 11 and 12 depends from amended independent claim 1 and recites additional limitations in combination with the novel elements of claim 1.

As discussed above, Hill does not teach or suggest attaching the waist strap and extending it from the *top perimeter portion* of the harness or providing an adjusting means to allow proper positioning of the infant on the hip or in the harness. Hill merely discloses utilizing a waist strap attached to the lower portion of the harness. Additionally, Hill clearly discusses using the waist strap to support the infant *along the waist* of the individual. Aleman is attached to the shoulder strap and does not teach or suggest utilizing the strap for holding a harness or any other holding device on another object.

Additionally, it is important to recognize that “[w]hen an obviousness determination relies on the combination of two or more references, there must be some suggestion or motivation to combine the references.” *WMS Gaming Inc. v. International Game Technology*, 51 USPQ 2d 1385, 1397 (Fed. Cir. 1999). See also *In re Rouffet*, 149 F.3d 1350, 1359, 47 USPQ 2d 1453, 1456 (Fed. Cir. 1999); *In re Oetiker*, 24 USPQ 2d 1443, 1446 (Fed. Cir. 1992).

As reiterated and emphasized by the Federal Circuit, such a requirement is a powerful protection against impermissible hindsight reconstruction:

“Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references. [citations omitted]. Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability– the essence of hindsight...[citations omitted].”

In re Dembiczak, 50 USPQ 2d 1614, ,1617 (Fed. Cir. 1999).


In this case, Hill describes a baby carrier for carrying a baby. Quite distinctly, Aleman describes a camera carrying device with an additional strap for retaining a shoulder strap in place. What would

be the motivation for combining these references describing two different and entirely distinct areas of technology? Since Hill is concerned with carrying an infant, it has no need for an additionally strap to hold a shoulder strap in place when this "shoulder" strap of Hill is actually a waist strap. Likewise, Aleman is merely concerned with holding a strap in place, not with attaching this attachment means to hold an infant against another object. Therefore, the Applicant respectfully submits that the combination of Aleman and Hill is improper since a claimed invention can "not be obvious without a demonstration of the existence of a motivation to combine those references at the time of the invention." *National Steel Car Ltd. v. Canadian Pacific Railway Ltd.*, 69 USPQ 2d 1641, 1654-55 (Fed. Cir. 2004), citing *Ecolochem, Inc. v. S. Cal. Edison Co.*, 227 F.3d 1361, 1371, 56 USPQ 2d 1065, (Fed. Cir. 2000). Indeed, the only teaching or suggestion that supports the combination of these references is found in the teaching of the present application. In short, this is a classic case of hindsight reconstruction in which the present patent application has been used as "a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit." *Orthopedic Equip. Co. v. United States*, 702 F.2d 1005, 1012, 217 USPQ 193, 199 (Fed. Cir. 1983). Therefore, the withdrawal of the rejection and the allowance of claims 11 and 12 is respectfully requested.

CONCLUSION

For all the above reasons, the Applicant respectfully requests the reconsideration and withdrawal of the rejection and the allowance of claims 1-20.

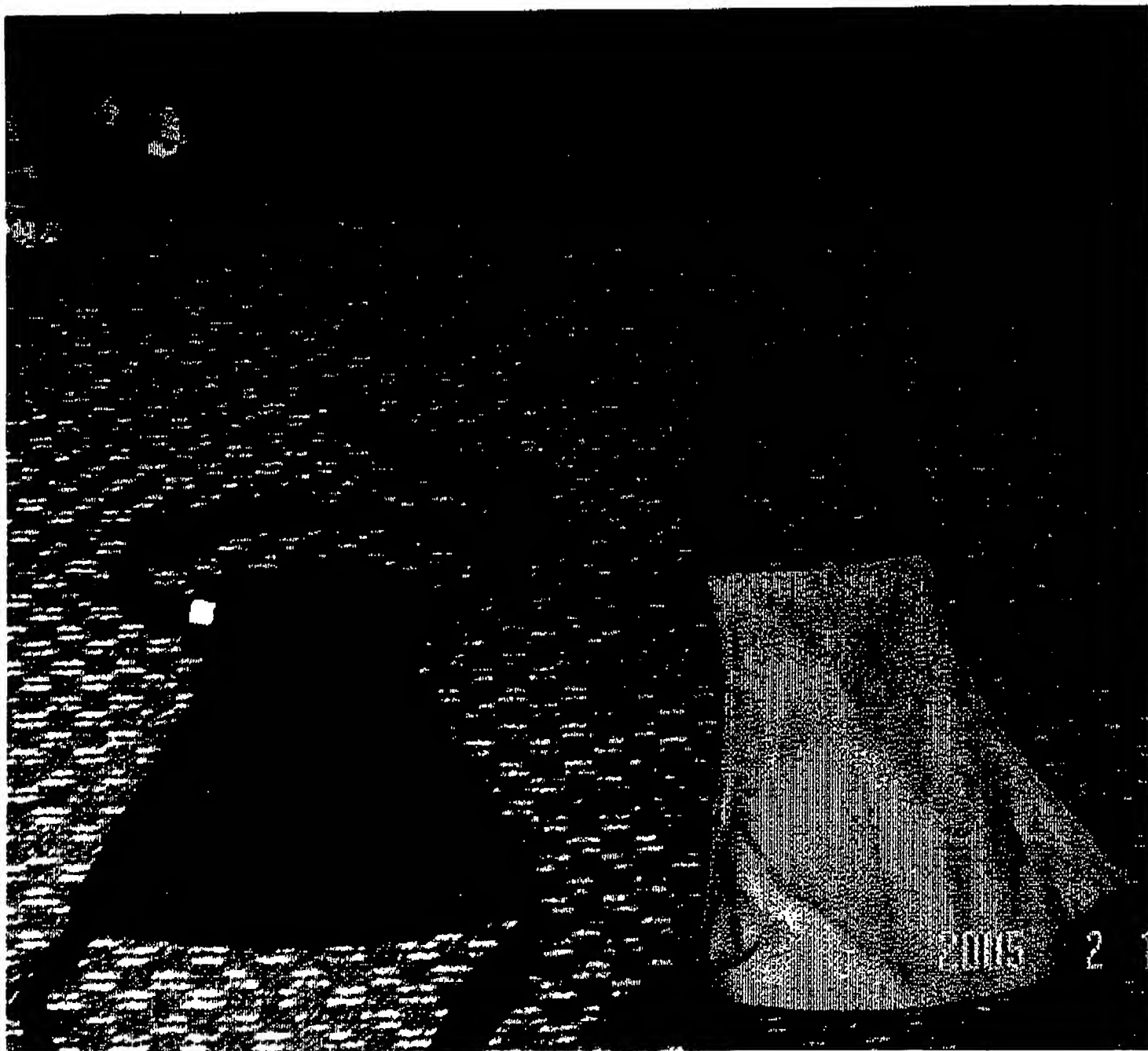
Respectfully submitted,


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Dated:

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Photograph Attachment A



↑
Hill
INFANT
CARRIER

USMBOSS
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↑
Applicant's
INFANT
CARRIER

Photograph Attachment 13



REVEREND
JAMES H. HILL

HILL INFANT CARRIER

Photograph ATTACHMENT C



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Applicant's INFANT
CARRIER

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